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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,739	11/20/2006	Mark E. Pomper	34565-002 CIP NATL	9607
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MALLOY & MALLOY 2800 S.W. THIRD AVENUE HISTORIC CORAL WAY MIAMI, FL 33129			EXAMINER PURINTON, BROOKE J	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/588,739	<b>Applicant(s)</b> POMPER, MARK E.	
	<b>Examiner</b> Brooke Purinton	<b>Art Unit</b> 2881	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 December 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 December 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark (USPN 4449746) and McGinley et al. (USPN 4833335) further in view of Machama et al. (USPN 5048070).

**Regarding Claim 2**, Clark teaches a mobile radiation treatment vehicle comprising (title):

a patient treatment compartment having at least one radiation shield member (Figure 2, part 16), said at least one radiation shield member positioned to prevent at least a portion of radiation emitted from a treatment device from passing through an interior of said patient treatment compartment to an outside area (walls 28 and doors 11, 29, and 55, window 27) said treatment device capable of emitting radiation and positioned in said patient treatment compartment (CT scanner, part 24 in Figure 2); said shielded partition member movably positioned relative to the treatment device and the user to reduce or prevent exposure to the user from radiation emitted from said treatment device during patient treatment. (technician at location 57 behind lead glass window 27, fully shielded through use of partition member part 29, door which when closed (through use of adjustability), completely protects the user behind the lead window).

Clark fails to explicitly state that the CT scanner is used in connection with radiation therapy.

However, McGinley et al. teach a shielded door for radiation therapy rooms, stating that "the present invention relates to a door for a treatment room with a medical accelerator which produces x-ray beams used in cancer therapy. This door prevents the escape of neutrons from the room while permitting access to the accelerator," (1, 7-10).

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X-ray beams are used in cancer therapy. Clark shields from x-ray beams used in tomography. Therefore, the mobile radiation treatment vehicle of Clark would work as a radiation therapy, and it would be an obvious substitution of one treatment device for another.

Clark and McGinley fail to teach a mount assembly structured to support and adjustably position said treatment device within said patient treatment compartment in both a vertical and a horizontal direction.

Maehama teaches an apparatus consisting of an X-ray tube which is adjustable in three dimensions to position it over an object of interest (Figures 1/2).

Modification would have entailed using the X-ray source of Maehama in the apparatus of Clark and McGinley in order to allow better use of the x-ray apparatus in positioning over the patient.

It would have been obvious to one of ordinary skill in the art to make such a modification since the use of X-ray can damage tissue, therefore, precision in positioning the radiation source will ensure that only the needed areas receive rays, preserving the health of the rest of the patients body.

Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make both the shield and the radiation apparatus adjustable, since it has been held that the provision of adjustability, where needed, involves only routine skill in the art. *In re Stevens*, 101 USPQ 284 (CCPA 1954).

**Regarding Claims 3**, Clark, McGinley et al. and Maehama teach a mobile radiation treatment vehicle according to claim 2. Clark further teaches wherein said at least one radiation shield member has shielding that is selected from the group consisting of lead, aluminum, alloys of lead, polymers, concrete, and fiberglass ("protection from the radiation within procedure room 16 is provided by walls 28 and doors 11, 29 and 55 formed of 1/16 inch thick lead with plastic and wood covering, and a ceiling 30 ... formed of .40 inch thick aluminum," 2, 53-56).

**Regarding Claim 4**, Clark, McGinley et al. and Maehama teach a mobile radiation treatment vehicle according to claim 2. Clark further teaches wherein said shielded partition member has shielding that is selected from the group consisting of lead, aluminum, alloys of lead, polymers, concrete, and fiberglass ("a technicians window 27 is located between the procedure room 16 and the control room 18 is

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formed of lead glass," 2, 60-61 where it would be obvious to make it fiberglass based, as long as it appropriately shields the technician).

**Regarding Claim 5**, Clark, McGinley et al. and Maehama teach a mobile radiation treatment vehicle according to claim 4. Clark further teaches wherein said shielded partition member extends upwardly from a floor of said vehicle to a height sufficient to shield a user (shielded partition member goes from floor up to the ceiling, figure 2, 11,28,29,55).

**Regarding Claim 6**, Clark teaches a method comprising:

(a) preparing a mobile radiation treatment vehicle having (title)

(i) a patient treatment compartment having at least one radiation shield member (Figure 2, part 16), at least one radiation shield member positioned to prevent at least a portion of radiation emitted from a treatment device from passing through an interior of said patient treatment, compartment to an outside area (walls part 28);

(ii) said treatment device capable of emitting radiation and positioned in said patient treatment compartment (Figure 2, part 24); and

(iii) a shielded partition member adjustably positioned in said patient treatment compartment in a radiation shielding position between said treatment device, said shielded partition member movably positioned relative to the treatment device and the user to reduce or prevent exposure to the user from radiation emitted from said treatment device during patient treatment (combination of wall 28 alongside right hand side of 16, window 27 and door 29 separating procedure room from technician console 27, where door 29 is adjustable relative to the user and the treatment device);

(b) providing access to an interior area of said patient treatment compartment to a patient (through any of the doors 55, 11 and 29);

(c) securing said treatment device in a position relative to said patient ("patient is placed on the scanner table 35," 5, 6-7);

(d) providing radiation to said patient ("conventional CT scanning then proceeds" 5, 9-10); and

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(e) shielding said user from at least a portion of said radiation emitted from said treatment device (“an operator at console 57 monitors the scanning procedure. The door 29 is always closed as is door 11 and the transformer room door 55,” 5, 12-15).

Clark fails to teach this method used in connection with radiation therapy.

Clark fails to explicitly state that the CT scanner is used in connection with radiation therapy.

However, McGinley et al. teach a shielded door for radiation therapy rooms, stating that “the present invention relates to a door for a treatment room with a medical accelerator which produces x-ray beams used in cancer therapy. This door prevents the escape of neutrons from the room while permitting access to the accelerator,” (1, 7-10).

X-ray beams are used in cancer therapy. Clark shields from x-ray beams used in tomography. Therefore, the mobile radiation treatment vehicle of Clark would work as a radiation therapy, and it would be an obvious substitution of one treatment device for another.

Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make any part of the shield or the apparatus adjustable, since it has been held that the provision of adjustability, where needed, involves only routine skill in the art. *In re Stevens*, 101 USPQ 284 (CCPA 1954).

**Regarding Claim 7 and 8**, Clark, McGinley et al. and Maehama teach a method according to claim 6. Clark further teaches wherein said at least one radiation shield member or shielded partition member has shielding that is b selected from the group consisting of lead, aluminum, alloys of lead, polymers, concrete, and fiberglass (2, 48-64).

**Regarding Claim 9**, Clark, McGinley et al. and Maehama teach a method according to claim 8. Clark further teaches wherein said shielded partition member extends upwardly from a floor of said vehicle to a height sufficient to shield a user (walls and doors, 11, 28,29,55).

**Regarding Claim 10**, Clark, McGinley et al. and Maehama teach the method according to claim 6. Clark further teaches wherein said access is by a door (11, 55 and 29 of Figure 2).

**Regarding Claim 11**, Clark, McGinley et al. and Maehama teach the method according to claim 10. Clark further teaches wherein said door is shielded to limit the passage of radiation (2, 53-55).

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***Response to Arguments***

Applicant's arguments filed 12/31/2008 have been fully considered but they are not persuasive.

Regarding Claim 2, in response to applicant's argument that there is no suggestion to place a radiation therapy apparatus in the place of the diagnostic equipment of Clark's mobile radiation vehicle, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Since the CT as well as a radiation therapy unit uses radiation which needs to be stopped from encountering any technicians who are not the intended target, the use of shields is similar enough to have suggested to one of ordinary skill to substitute one known element for another in an appropriate (i.e. shielded and partitioned) environment.

Regarding Claim 8, in response to the applicant's argument that there is no suggestion to combine the references, the Examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. In re Nomiya, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. In re McLaughlin, 170 USPQ 209 (CCPA 1971). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. In re Bozek, 163 USPQ 545 (CCPA 1969). In this case, since the CT as well as a radiation therapy unit uses radiation which needs to be stopped from encountering any technicians who are not the intended target, the use of shields is similar enough to have suggested to one of ordinary skill to substitute one known element for another in an appropriate (i.e. shielded and partitioned) environment.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brooke Purinton whose telephone number is 571.270.5384. The examiner can normally be reached on Monday - Friday 7h30-5h00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Kim can be reached on 571.272.2293. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David A Vanore/  
Primary Examiner, Art Unit 2881

Brooke Purinton  
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